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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION
10

11 ROBERT PRITIKIN, et al.,

12 Plaintiffs,

13 v.

14 COMERICA BANK, et al.,

15 Defendants.
16

CASE NO. CV 09-03303 JF

**DECLARATION OF MONIQUE JEWETT-
BREWSTER IN SUPPORT OF
DEFENDANTS COMERICA'S MOTION
TO DISMISS THE COMPLAINT**

Date: October 9, 2009
Time: 9:00 a.m.
Judge: Honorable Jeremy Fogel

Complaint filed:
Trial Date Set:

1 I, Monique Jewett-Brewster, hereby declare and state:

2 1. I am an attorney admitted to practice law before the United States District Court
3 for the Northern District of California, and I am an associate in the law firm of Buchalter Nemer,
4 A Professional Corporation, attorneys of record for Defendant Comerica Bank. I am one of the
5 attorneys responsible for representing Comerica in the above-captioned matter. I know the
6 following to be true, except where alleged upon information and belief, and as to those matters, I
7 believe my information to be true and correct. If called as a witness, I could and would
8 competently testify to the truth of the matters stated herein.

9 2. Section 341(a) of Title 11 of the United States Code (the "Bankruptcy Code")
10 provides that the United States Trustee shall convene and preside at a "meeting of creditors" in
11 any petition filed for bankruptcy relief pursuant to the Bankruptcy Code.

12 3. The chief function of the meeting of creditors is to provide the court-appointed
13 trustee in any bankruptcy case, and all creditors of a debtor's bankruptcy estate, the opportunity to
14 examine the debtor under oath, and gain more information about the debtor's assets, liabilities
15 and financial condition, in general. There are no limitations as to who can attend a 341(a)
16 meeting of creditors (other than the court, who is barred from attending pursuant to Section
17 341(b) of the Bankruptcy Code). All the creditors of a debtor's bankruptcy estate, and their
18 attorneys, are free to attend a 341(a) meeting and question the debtor under oath.

19 4. I am informed and believe that most Offices of the United States Trustee record
20 and maintain transcripts of the 341(a) meetings of creditors over which their designated
21 representatives preside.

22 5. Based on this information, on August 21, 2009, I caused to be made a telephone
23 call to the Office of the United States Trustee located at 725 S. Figueroa Street, Suite 2600, Los
24 Angeles, California 90017, which is responsible for convening and presiding over 341(a)
25 meetings of creditors held in bankruptcy cases filed in the United States Bankruptcy Court for the
26 Central District of California, Los Angeles Division. The purpose of the call was to request a
27 copy of the transcript for the 341(a) meeting of creditors held on May 4, 2004 in the Chapter 7
28 bankruptcy case styled *In re Four Star Financial, LLC*, and assigned Case No. 03-37579 in the
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1 United States Bankruptcy Court for the Central District of California, Los Angeles Division.

2 6. I was advised that this Office of United States Trustee implements a document
3 retention program pursuant to which all transcripts of recorded 341(a) meetings of creditors are
4 destroyed after five years. I also was advised that, due to the fact that the May 4, 2004 341(a)
5 meeting of creditors took place more than five years ago, the Office of the United States Trustee
6 has destroyed all copies of any transcripts for this meeting.

7 7. I understand that plaintiffs allege in their Complaint that they could not, with
8 reasonable diligence, have learned facts about Comerica's banking relationship with Four Star,
9 and two of its principals, Ron Anson and Jack Garrett and/or the alleged "Banking Scheme".
10 However, in addition to attending the 341(a) meetings of creditors (which are reflected in the
11 respective court dockets for the Four Star, Anson and Garrett bankruptcies to have spanned
12 **multiple days**), pursuant to Federal Rule of Bankruptcy Procedure 2004, the plaintiffs had the
13 ability to subpoena documents, and examine not only Four Star employees, but Comerica
14 personnel as well. Rule 2004 examinations are routinely taken by creditors in bankruptcies such
15 as the Four Star bankruptcy, particularly regarding potential claims that may exist against third
16 parties. Rule 2004 specifically allows the subpoenaing of records and taking of depositions
17 without the necessity of having filed suit. Also, as set forth in the Request for Judicial Notice
18 filed concurrently herewith, the Four Star bankruptcy schedules disclose each of Comerica's
19 accounts with Four Star, as well as payments made to or for the benefit of insiders within the year
20 prior to the bankruptcy. Therefore, the plaintiffs had ample public information available and
21 could have easily obtained additional information either through participating in the 341(a)
22 meeting of creditors or the taking of Rule 2004 examinations.

23 8. In addition to the foregoing, the Four Star bankruptcy docket further reflects that
24 the bankruptcy trustee retained forensic accountants, Squar/Milner, who performed various
25 analyses of Four Star's pre-petition activities, including the flow of money in and out of the Four
26 Star deposit accounts. Accordingly, the plaintiffs could have easily requested information from
27 the trustee regarding his forensic accountants' findings either informally or through a Rule 2004
28 examination request.

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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that this Declaration is executed on August 28, 2009, at San
3 Francisco, California.

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6 Monique Jewett-Brewster
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